IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 85 OF 2005

SHRI GHANASHYAM G.BHENDE AND ANR., ...Appellants

Versus

SHRI DATTARAM V.DHARWADKAR AND ANR., ...Respondents

Shri J.P.Mulgaonkar, Advocate for the Appellants.
Mr. Devidas Pangam, Advocate For Respondents No.1 and 2.

Coram:- R.M.S. KHANDEPARKAR, J.

Date:- 10th February, 2006

P.C.:

Heard the learned Advocates for the parties.

The appellants seek to challenge the concurrent findings arrived at by the Courts below contending that the following points arise as substantial questions of law :-

(i) Whether the fraudulent nature of the gift by the Defendant no.1 to the Defendant no.2 purportedly on behalf of the Plaintiffs was not apparent and palpable in view of the relationship between them and in view of the fact that the Defendnt No.1 married the Defendant No.2 only a few months after the execution of the gift deed and in the context of this fact non mentioning of the name of the Defendant No.2 as the Donee in the purported power of attorney was a relevant and could not have been ignored by the courts below.

(ii) Whether in view of the admitted fact that the Defendant no.1 who acted as the purported attorney for the Plaintiffs for executing gift deed in favour of the Defendant no.2 was going to marry the Defendant no.2, the

beneficiary of the said purported gift, the burden of proving that the gift was free from the taint of fraud did not lie on the Defendants and not on the Plaintiffs as assumed by the Courts below.

(iii) Whether the Learned Additional District Judge did not commit error in deciding the issue of limitation by ignoring section 17 of the Indian Limitation Act which make the commencemet of period of limitation run from the date of discovery of fraud which in this case was in the year 1992 itself i.e. year when the suit was instituted.

(iv) Whether Learned Additional District Judge committed an error in holding that DW1 (Defendant no. 2) was possessing and enjoying the suit property prior to 1983 before the execution of the gift deed as her possession was not in her own right but she was merely looking after the property as atorney of the Plaintiffs and the possesion of the property was with the Plaintiffs.

(v) Whether even assuming that the Defendants were in possession from the date of execution of the gift deed on 25/6/1983 the suit filed in the year 1992 was not well within the period of limitation.

Undisputedly, the appellants had approached the Court with the allegation of fraud being played by the respondents in obtaining the power of attorney as well as in execution of the gift deed by respondent No.1 in favour of respondent No.2 on the strength of the power of attorney. The appellants failed to establish their allegation in this regard and both the courts below have arrived at concurrent findings in that respect. Whether the appellants had been able to discharge the burden and whether the onus has shifted upon the respondents to prove that there was no fraud in the execution of the attorney or in the gift deed, relate to the matter of appreciation of evidence and would not give rise to any substantial questions of law as such, more particularly in the facts and circumstances of the case and considering the concurrent findings arrived at by the Courts below. The points which are stated to be substantial questions of

law, are in fact, matters in the realm of appreciation of evidence and do not constitute substantial questions of law.

In the absence of substantial questions of law arising in the matter, the appeal is rejected.

R.M.S. KHANDEPARKAR, J.

sl.